

REMARKS

Favorable reconsideration of this application, in light of the preceding amendments and following remarks, is respectfully requested.

Claims 1-20 are pending in this application. By this Amendment, claims 1, 6, 7, 13, 14, 19, and 20 are amended. No new matter is added. Claims 1, 13, 14, 19, and 20 are the independent claims.

Claim Rejections - 35 U.S.C. § 112

Claims 1-13 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicants respectfully traverse this rejection for the reasons discussed below.

In particular, claims 1 and 13 are rejected for being unclear whether the floorboard includes a resilient base, support and locking system. Applicants respectfully submit that claims 1 and 13 have been amended to more positively recite the invention. For instance, claims 1 and 13 have been amended to include the "upper main structure" which may include the surface layer 2, the core 3, and the balancing layer 4, in addition, to the supporting layer 11 and the resilient base 10. Thus, the floorboard as defined in claims 1 and 13 includes the upper main structure 2, 3, 4, the supporting layer 11, the resilient base 10, and the locking system.

In view of the above, Applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. §112, second paragraph.

Claim Rejections - 35 U.S.C. § 102

Claims 1, 13-17, 19 and 20 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,006,486 ("Moriau"). Applicants respectfully traverse this rejection for the reasons discussed below.

Applicants respectfully submit that the Moriau reference fails to disclose, or even suggest, a floorboard that includes "an upper main structure," "a supporting layer," and "a resilient base," as taught in claim 1.

Instead, the Moriau reference discloses a floorboard consisting of a core 8 (corresponding to core 3), a decorative layer 55 with a protective top layer 56 (corresponding to surface layer 2), and a backing layer 58 (corresponding to balancing layer 4). Accordingly, it is the Examiner's position that the core 8 of Moriau corresponds to the "supporting layer" and the backing layer 58 of Moriau corresponds to the "resilient base." *See Final Office Action mailed May 12, 2009, page 2, 1st paragraph.* However, it is respectfully submitted that the core 8 is not a supporting layer arranged on the underside of the upper main structure and extending beyond the joint plane. Moreover, the backing layer 58 is also not a resilient base (as compared with the claimed resilient base 10) arranged on the underside of the balancing layer and extending beyond the joint plane because there are no elements extending beyond the joint plane in the floorboard of Moriau. In fact, the only element that extends beyond the joint plane may be the tongue member 9 of the core 8. *See FIGS. 9-11 of Moriau.* Accordingly, the decorative layer 55, the protective top layer 56, and the backing layer 58 of Moriau do not extend beyond the joint plane.

In addition, in response to the Examiner's comments found in the "Response to Arguments" section (page 4 of the May 12, 2009 Final Office Action), that the backing layer 58 of Moriau is resilient," is inaccurate and not correct. In particular, the

Examiner asserts that since Moriau discloses that the backing layer 58 may be constructed of various materials, such as melamine resin, it is understood to be a thermal plastic material. Applicants respectfully disagree because one of ordinary skill in the art would appreciate that a melamine resin is a hard, thermal setting plastic material which is often used on the surface layer in a decorative for laminates (and not the resilient layer). Therefore, Moriau does not teach the backing layer 58 to be “resilient.”

Therefore, contrary to the Examiner’s contention, the Moriau reference does not disclose or suggest each and every element of claim 1. Since the Moriau reference fails to disclose each and every element of claim 1, it cannot provide a basis for a rejection under 35 U.S.C. §102(b) and, thus, is allowable. Claim 13 is also allowable for the similar reasons discussed above with respect to claim 1.

Claims 19 and 20 are method claims which correspond to claim 1. Applicants respectfully submit that these claims are allowable for the similar reasons presented above in regard to claim 1.

For at least these reasons, the Examiner is respectfully requested to reconsider and withdraw the §102(b) rejection of claims 1, 13-17, 19 and 20.

Claim Rejections - 35 U.S.C. § 103

Claims 2-12 and 18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Moriau. Applicants respectfully traverse this rejection for the reasons discussed below.

Claims 2-12 and 18 are believed to be allowable for at least the reasons set forth above regarding claim 1 and 14. Since claims 2-12 and 18 are patentable at least by virtue of their dependency on either independent claims 1 or 14, Applicants

respectfully request that the rejection of claims 2-12 and 18 under 35 U.S.C. § 103(a) be withdrawn.

Entry of After Final Amendment

Applicants respectfully submit that this Amendment After Final Rejection places this application in condition for allowance by amending claims in manners that are believed to render all pending claims allowable over the cited art and/or at least place this application in better form for Appeal. This Amendment is necessary to clarify the elements of the floorboard, which may include the upper main structure, the supporting layer, the resilient base, and a locking system, and was not earlier presented because Applicants believe that the prior responses place this application in condition for allowance, for at least the reasons discussed in those responses. Accordingly, entry of the present Amendment, as an earnest attempt to advance prosecution and/or to reduce the number of issues, it is requested under 37 C.F.R. §1.116.

CONCLUSION

In view of the above remarks and amendments, Applicants respectfully submit that each of the pending objections and rejections has been addressed and overcome, placing the present application in condition for allowance. A notice to that effect is respectfully requested. Further, the above remarks demonstrate the failings of the outstanding rejections, and are sufficient to overcome the rejections. However, these remarks are not intended to, nor need they, comprehensively address each and every reason for the patentability of the claimed subject matter over the applied prior art.

Accordingly, Applicants do not contend that the claims are patentable solely on the basis of the particular claim elements discussed above.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned, at the telephone number below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKY, & PIERCE, P.L.C.

By  Reg. no. 48,078
Donald J. Daley, Reg. No. 34,913

P.O. Box 8910
Reston, Virginia 20195
(703) 668-8000

DJD/DJC:clc